

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request # 563280

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long Term Care Medicaid benefits ("L01").

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2013.

On ██████████, 2013, the Appellant requested that the hearing be rescheduled.

On ██████████, 2013, the OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2014.

On ██████████, 2014, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant's Son and Conservator of Person and Estate
██████████, Appellant's Daughter-in-Law

██████████, Attorney for the Appellant
Julie Risko, Department's Representative
James Hinckley, Hearing Officer

The hearing record remained open until ██████████ 2014 for the submission of additional evidence. On ██████████ 2014, the hearing record closed.

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether real property located at ██████████ ██████████ should be excluded from the Department's Assessment of Spousal Assets.
2. The second issue to be decided is whether ██████████ (the "Community Spouse") needs additional assets protected from the Appellant's share of assets to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").

FINDINGS OF FACT

1. The Appellant began a continuous period of institutionalization on ██████████, 2013 when he entered Danbury Hospital. Following his initial hospital admission, the Appellant was a resident of two different long term care facilities until his readmission to the hospital on ██████████, 2013, followed by his discharge to home hospice on ██████████, 2013 and his death on ██████████ 2013. (Exhibit A: Attorney's presentation for the Appellant)
2. On ██████████ 2013, the Appellant applied for L01 Medicaid. (Hearing Record)
3. In addition to their home property located at ██████████ the appellant and his spouse own a second property located at ██████████ (Hearing Record)
4. The property at ██████████ has not been placed for sale by the Appellant. (Appellant's testimony)
5. On ██████████ the Department determined that the combined total of the Appellant's and the Community Spouse's non-exempt assets was \$165,174.08 as of the ██████████ date of institutionalization ("DOI"). Refer to chart below.

Asset	Asset Value As of DOI
Bank of America Acct# [REDACTED]	\$11,084.81
Bank of America Acct# [REDACTED]	\$6,988.12
Bank of America Acct# [REDACTED]	\$7,001.15
[REDACTED] Rental Property	\$140,100.00
Total Assets	\$165,174.08

(Exhibit 3: Spousal Assessment Worksheet)

6. The Appellant's counsel does not dispute any of the valuations used by the Department in their assessment of spousal assets; he disputes only the treatment of [REDACTED] as a non-exempt asset in the assessment. (Appellant's testimony)
7. The Department determined the spousal share of the assets was \$82,587.04 as of the DOI (1/2 of the couple's combined non-exempt assets). (Ex. 2: W-1-SAN Assessment of Spousal Assets Notification of Results and Ex. 3)
8. The Department determined the Community Spouse Protected Amount (CSPA) was \$82,587.04 as of the DOI. (Ex. 2 and Ex. 3)
9. On [REDACTED] 2013, the Department denied the Appellant's application for Medicaid due to assets in excess of the allowable limit. [Total combined assets of \$165,174.08 exceeds allowable limit of \$84,587.04 (\$82,587.04 CSPA + \$1600.00 Medicaid Asset Limit)] (Ex. 2 and Exhibit 11: [REDACTED]/13 Notice of Denial)
10. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2013. (Appellant's testimony)
11. The Community Spouse has a real estate tax expense for her residence at [REDACTED] of \$144.26 monthly (\$1731.16 annual taxes / 12 = \$144.26). (Exhibit B: City of [REDACTED] 2013 Real Estate Tax Bill)
12. The Community Spouse has a homeowner's insurance expense for her residence at [REDACTED] of \$72.17 per month (\$866.00 annual premium / 12 months). (Exhibit C: Homeowners Renewal Certificate)
13. [REDACTED] is currently leased to a tenant who pays \$1000.00 per month rent. (Exhibit G: Residential Lease Agreement for [REDACTED])

14. Costs associated with the rental property located at [REDACTED] include: property taxes of \$220.43 monthly (\$577.54 quarterly taxes for residence at [REDACTED] 3 months, plus \$83.75 quarterly taxes for lot at [REDACTED] / 3 months); Road/Water tax of \$43.41 monthly (\$65.93 quarterly road tax / 3 months, plus \$64.30 quarterly water usage charge / 3 months); and homeowners insurance of \$69.17 monthly (\$830.00 annual premium / 12 months), for total monthly expenses of \$330.01 (\$220.43 + \$43.41 + \$69.17). (Exhibit H: [REDACTED] Real Estate Tax Bill, Exhibit I: [REDACTED] Real Estate Tax Bill, Exhibit J: Road & Water Tax Bill, Exhibit K: Homeowners Insurance Bill for [REDACTED])
15. As of the DOI, the actual rates of return on the Appellant's three bank accounts at Bank of America are as follows: Account [REDACTED] – 0.02%, Account [REDACTED] – 0.01%, Account # [REDACTED] – 0.02%. (Exhibit 5: Bank of America consolidated account statement dated [REDACTED] 2013)
16. As of [REDACTED] 2014, the average 12 month Certificate of Deposit bank rate for [REDACTED], CT is 0.12%. ($0.20\% + 0.10\% + 0.05\% = 0.35\% / 3 = 0.12\%$) (Bankrate.com CD Rates : [REDACTED], CT)
17. As of the DOI, the Community Spouse has monthly gross income from Social Security of \$428.00. (Exhibit E: Social Security Benefit Amount Statement)
18. As of the DOI, the Appellant has monthly gross income from Social Security of \$803.00. (Exhibit F: Social Security Benefit Amount Statement)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual (“UPM”) § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:

Assessment Process

1. The Department provides an assessment of assets:
 - a. at the request of an institutionalized spouse or a community spouse:
 - (1) when one of the spouses begins his or her initial continuous period of institutionalization; and

- (2) whether or not there is an application for Medicaid; or
 - b. at the time of application for Medicaid whether or not a request is made.
2. The beginning date of a continuous period of institutionalization is:
 - a. for those in medical institutions or long term care facilities, the initial date of admission;
 - b. for those applying for home and community based services (CBS) under a Medicaid waiver, the date that the Department determines the applicant to be in medical need of the services.
3. The assessment is completed using the assets which existed as of the date of the beginning the initial continuous period of institutionalization which started on or after September 30, 1989.
4. The assessment consists of:
 - a. a computation of the total value of all non-excluded available assets owned by either or both spouses; and
 - b. a computation of the spousal share of those assets.
5. The results of the assessment are retained by the Department and used to determine the eligibility at the time of application for assistance as an institutionalized spouse.
6. Initial eligibility is determined using an assessment of spousal assets except when:
 - a. undue hardship exists (Cross Reference 4025.68); or
 - b. the institutionalized spouse has assigned his or her support rights from the community spouse to the department (Cross Reference: 4025.69); or
 - c. the institutionalized spouse cannot execute the assignment because of a physical or mental impairment. (Cross Reference: 4025.69).
3. The Department correctly determined that the Appellant's date of institutionalization (DOI) for purposes of conducting the Assessment of Spousal Assets is ■■■■ ■■■■ 2013, the date he began a continuous period of institutionalization.
4. Uniform Policy Manual ("UPM") § 4020.10(J) discusses the treatment of non-home property in the context of Excluded Assets for MAABD Medicaid and provides that:

Non-home property which would render the assistance unit ineligible is excluded for as long as the assistance unit is making a bona fide effort to sell the property and:

1. agrees in writing to dispose of the property; and
 2. immediately lists the property for sale; and
 3. does not refuse any offer which approximates fair market value; and
 4. in AABD, grants the Department a security mortgage on the property pending its sale
5. The Department correctly determined that the property located at [REDACTED] is not an excluded asset for purposes of conducting the Assessment of Spousal Assets.
6. UPM § 5050.69(A)(1)(b) provides that income received by the assistance unit from renting property to someone else is treated unearned self-employment income under the Medicaid programs unless the income is derived from a business enterprise.

UPM § 5050.69(A)(2) provides that the total self-employment income earned each month is reduced by the following self-employment deductions when they are incurred:

- a. labor (wages paid to an employee or work contracted out);
- b. interest paid to purchase income producing property;
- c. insurance premiums;
- d. taxes, assessments, and utilities paid on income producing property;
- e. service and repair of business equipment and property;
- f. rental of business equipment and property;
- g. advertisement;
- h. licenses and permits;
- i. legal or professional fees;
- j. business supplies.

UPM § 5050.69(A)(3)(b) provides that when the rental property is not part of home-occupied property, the expenses are considered in total.

UPM § 5050.69(A)(4) provides that the gross earned income which remains after consideration of self-employment expenses is reduced by all appropriate deductions and disregards;

UPM § 5050.69(A)(5) provides that the remaining amount of money is applied income.

7. The rental property at [REDACTED] produces \$669.99 in applied income monthly, \$335.00 to each spouse. In determining the rental income, the tenant's monthly payment of \$1000.00 is properly reduced by \$330.01 in allowable expenses associated with renting the property.

8. UPM § 1570.25(D)(4) provides that the Fair Hearing Official increases the Community Spouse Protected Amount (CSPA) if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the Minimum Monthly Needs Allowance ("MMNA") (Cross References § 4022.05 and 4025.67)

b. For applications filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair hearing official first allows for a diversion of the institutionalized spouse's income in all cases.

c. In determining the amount of assets needed to raise the community spouse's income to the MMNA, the Fair Hearing official computes the amount of assets that would generate the required income, assuming the asset is producing income at the higher of the following rates: the current average rate of return generated by a 12 month certificate of deposit as determined by the Department as of the date of the Fair Hearing; or the rate that is actually being generated by the asset.

9. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and MMNA and states:

B. Calculation of CSA

1. The CSA is equal to the greater of the following:

- a. the difference between the Minimum Monthly Needs Allowance (MMNA) and the community spouse gross monthly income; or
- b. the amount established pursuant to court order for the purpose of providing necessary spousal support.

2. The MMNA is that amount which is equal to the sum of:

- a. the amount of the community spouse's excess shelter cost as calculated in section 5035.30 B.3.; and
- b. 150 percent of the monthly poverty level for a unit of two persons.

3. The community spouse's excess shelter cost is equal to the difference between his or her shelter cost as described in section 5035.30 B.4. and 30% of 150 percent of the monthly poverty level for a unit of two persons.

4. The community spouse's monthly shelter cost includes:

- a. rental costs or mortgage payments, including principle and interest; and
- b. real estate taxes; and

- c. real estate insurance; and
- d. required maintenance fees charged by condominiums or cooperatives except those amounts for utilities; and

5. The Standard Utility Allowance (“SUA”) used in the Supplemental Nutrition Assistance program (“SNAP”) is used for the community spouse.

10. Effective [REDACTED] 2013, the Community Spouse’s MMNA is \$2,241.56 as shown in the calculation below:

Property Tax	\$144.26
Homeowners Insurance	+ \$ 72.17
Standard Utility Allowance	+ \$668.00
Total Shelter Costs	= \$884.43
30% of 150% of FPL for 2	-\$581.63
Excess Shelter Costs	= \$302.81
150% FPL for 2	+\$1,938.75
MMNA	= \$2,241.56

11. Effective [REDACTED] 2013, the deficit between the Community Spouse’s income and her MMNA is \$1478.56 as shown in the calculation below:

MMNA	\$2,241.56
Community Spouse SSA	-\$428.00
CS ½ share net rental income	-\$335.00
Equals Deficit	= \$ 1,478.56

10. UPM § 5035.25 provides that for residents of long term care facilities (“LTCF”) and those individuals receiving community-based services (“CBS”) when the individual has a spouse living in community, total gross income is adjusted by certain deductions to calculate the amount of income which is to be applied to the monthly cost of care.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

- 1. a personal needs allowance of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration. (Effective September 2013 = \$60.00)

11. The Appellant has income in the amount of \$1,078.00 available to be diverted to the Community Spouse to help meet her MMNA (\$803.00 SSA + \$335.00 ½ share of net rental income - \$60.00 personal needs allowance).

12. After diverting all available income from the Appellant, the Community Spouse still has a deficit of \$400.56. (\$1478.56 original deficit - \$1078.00 income available from Appellant Spouse)
13. The remaining unprotected spousal assets of \$82,587.04 would generate monthly interest income of \$8.26 at the 0.12% current average rate of return generated by a 12 month certificate of deposit, which is higher than the actual rate of return on the couple's Bank of America accounts. ($\$82,587.04 \times .0012 = \$99.10 / 12 = \$8.26$ monthly interest income)
14. Effective [REDACTED] 2012, the Community Spouse's CSPA is increased to \$165,174.08 to generate additional income needed to help meet her MMNA.
15. Effective [REDACTED] 2013, the Appellant has zero assets.
16. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
17. Effective [REDACTED] 2013, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

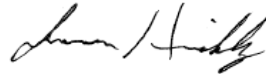
The Department acted correctly in its determination of the Appellant's eligibility. However, the regulations of the Department allow the Hearing Officer to protect additional assets from the Appellant/Institutionalized spouse to meet the needs of the Community Spouse. The Appellant's attorney proposed that the Appellant's non-home property at [REDACTED] be excluded as a countable asset in the Department's Assessment of Spousal Assets, because the rental income produced by the property was needed by the Community Spouse. The attorney was asked whether he requested that the hearing decision consider other possible methods of addressing the income shortfall of the Community Spouse and answered that he did. I find that the regulations for the program do not allow for the non-home property to be treated as an excluded asset in the spousal assessment. However, after the assessment has been completed, if the Community Spouse has insufficient income for her monthly needs, the Fair Hearing Officer is authorized to increase the CSPA as a means of providing additional income to the Community Spouse in order to help meet her MMNA.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will reopen the Appellant's application for Medicaid effective [REDACTED] 2013.
2. Effective [REDACTED] 2013, the CSPA is increased to \$165,174.08.
3. No later than [REDACTED] 2014 the Department will submit to the undersigned verification of compliance with this order.



James Hinckley
Hearing Officer

CC: Judy Williams, SSOM Waterbury
[REDACTED]

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 25 Sigourney Street, Hartford, CT 06106. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.